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IN THE

Supreme Court of the United States

October Term, 1969

No. 380

WILLIAM F. SANFORD,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

REPLY BRIEF FOR THE PETITIONER

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Reasons for this Reply Brief

This Reply Brief is addressed to the following arguments first raised in the brief in opposition:

1. An adequate record is an unsupported self-serving written testimony if it is not coupled with documentary evidence. (First paragraph of Bro* 5).

2. To require documentary evidence over and above an adequate record is only an interpretation of the word "adequate". (Second paragraph of Bro 6).

3. Contrary to petitioner's assertion (Pet. 9-11), the Regulations do not require a taxpayer to substantiate entertainment expenses both by "adequate records" and by "sufficient evidence corroborating his own statement" in

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*"Bro" denotes the brief for the respondent in opposition.

contravention of the statute which permits substantiation by either adequate records or no records but a statement corroborated by sufficient evidence. (Second paragraph of Bro 7).

4. Does interpretation of a statute include to add to the statute something what it does not contain? (Second paragraph of Bro 6).

5. The Commissioner does not exceed his authority if his Regulations are entirely reasonable. (Last paragraph of Bro 6).

6. Petitioner's diary was found to be inadequate. (Lines 6-7 of Bro 8).

ARGUMENT

1. As the Law mandatorily prescribes that the taxpayer has to substantiate his business entertaining expenses "by adequate records" (Section 274(d)), the Government cannot degrade it by labeling petitioner's proof according to the Statute as "unsupported self-serving written * * * testimony" (Bro 5). This argument of the respondent is contrary to Law, and therefore invalid. At the same time it shows the Government's weakness in having to resort to such distortion.

2. The word "adequate" refers to the record, consequently only the quality of the record itself could be meant by Congress. Any further piece of evidence—as e.g. any documents—is extraneous. If all of the elements spelled out by the statute are recorded by the petitioner then petitioner's record is "adequate" according to statutory definition.

Petitioner does not have to rely on this simple confusion of the governmental authorities dealing with his complaint. That confusion is rooted much deeper:

3. Section 274(d) does contain a mandatory rule about documentary evidence, called "sufficient evidence corroborating his own statement."

This, however, relates clearly to the substantiation by a taxpayer's "own statement", which, in turn, is dissociated through the use of the disjunctive "or" from a substantiation "by adequate records". It is very impressive to observe the laborious endeavor to connect what is disconnected by the Law, to require documents for corroboration not only of a taxpayer's "own statement" but also a taxpayer's "adequate record", which endeavor is clearly barred by the Law, barred by Congress and barred by logic.

To achieve this, the distortion of the word "adequate" will not suffice until there is the Law, the Congress—and the logic.

Further contradictions arising of this laborious distortion:

4. There are several approaches and efforts to strain and extend the realm of interpretation by Regulations, Rulings, and the pertinent authority of those who are entrusted to make them. But there never was and never can be such a monstrosity, as to suppose that any interpretation could add to the statute something that it does not contain.

This is what is needed to uphold the position of respondent, second paragraph of Bro 6. A position which is built on such monstrosity is, itself, equally monstrous. Moreover

5. in the last paragraph of page 6 of its brief, the Government underpins its position by stating:

> "The pertinent Regulations are entirely reasonable."

Reasonableness in itself will never be enough to uphold the validity of a Regulation. On the contrary:

> "* * * it is only the power to carry into effect the will of Congress as expressed by the statute. *Manhattan Company v. Commissioner*, 297 U.S. 129."

and negatively:

> "A regulation may not alter or amend the revenue law, nor extend a statute or modify its provisions,"

as in the present matter. *Campbell* v. *Galeno Chemical Co.*, 281 U.S. 599.

That the Government finds it to be sufficient if the Regulation is "entirely reasonable", suggests that there was no stronger argument available and especially that both the aforementioned positive and negative requirements are missing.

6. All of the entertainment expenses in individual amounts of less than $25 were approved by respondent and deducted, and were not put in issue. (Pet. 6a and Bro third paragraph p. 3).

This admitted fact of adequacy and appropriateness of petitioner's record as

> "Any fact bearing upon the issue involved, admitted by counsel, may be the ground of the Court's procedure equally as if established by the clearest proof." *Oscanyan* v. *Arms Co.*, 103 U.S. 261, 263; 26 L.Ed 539 (1880).
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> "Facts judicially admitted [Pet. 6a. and Bro third paragraph p. 3] are facts established not only beyond the need of evidence to prove them, but beyond the power of evidence to controvert them." *Hill* v. *Federal Trade Commission* (5CA), 124 F. 2d 104, 106 (1941).

CONCLUSION

For all the foregoing reasons, a writ of certiorari to the United States Court of Appeals for the Second Circuit should be granted.

Respectfully submitted,

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